

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SIERRA FOREST LEGACY, SIERRA
CLUB, EARTH ISLAND INSTITUTE,
and CALIFORNIA NATIVE PLANT
SOCIETY, non-profit organizations,

Plaintiffs,

v.

BERNARD WEINGARDT, in his official
capacity as Regional Forester, Region 5,
United States Forest Service, EDWARD
COLE, in his official capacity as Forest
Supervisor, Sierra National Forest
United States Forest Service, ABIGAIL
R. KIMBELL, in her official capacity as
Chief of the United States Forest Service,
and UNITED STATES FOREST
SERVICE, an agency of the United States
Department of Agriculture,

Defendants.

CASE NO: CASE NO: 07-2646 SBA

**[Proposed] ORDER GRANTING
MOTION TO TRANSFER VENUE**

Before the Court is Defendants' motion, pursuant to 28 U.S.C. § 1404(a) and Local Civil Rule 3-2(f), to transfer this case to the U.S. District Court for the Eastern District of California on the grounds that the case could have been brought there originally, and because transfer is in the interest of justice and would not inconvenience the parties. For the reasons set forth below, Defendants' Motion to Transfer Venue is GRANTED.

BACKGROUND

Plaintiffs Sierra Forest Legacy, Sierra Club, Earth Island Institute, and California Native Plant Society have brought suit in this Court alleging that the United States Forest Service's decision to authorize the Kings River Project in the Sierra National Forest violates the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA"), and the National Forest Management Act, 16 U.S.C. § 1604 ("NFMA"). Compl. ¶¶ 50-95.

1 The Kings River Project is in a portion of the Sierra National Forest located in Fresno
2 County, within the jurisdiction of the United States District Court for the Eastern District of
3 California. The Final Environmental Impact Statement (“FEIS”) for the Kings River Project was
4 prepared in Prather, California in Fresno County in the Eastern District of California, and the
5 Record of Decision (“ROD”) approving the Kings River Project was signed at the Forest
6 Supervisor’s office in Clovis, California, which is also in the Eastern District. The documents
7 that will form the administrative record and the Forest Service employees who will assist in the
8 defense of the case are located at the Ranger District in Prather, California, which is in the
9 Eastern District of California and is approximately 200 miles from San Francisco, California. In
10 addition, administrative appeals of the Kings River Project were processed and decided at the
11 Forest Service Regional Office for the Pacific Southwest Region located in Vallejo, California,
12 which is in Solano County and also within the Eastern District of California. See 28 U.S.C. § 84.
13 According to the excerpts of the FEIS submitted by Defendants, the purposes of the Kings River
14 Project include reducing fire risk to surrounding local communities in the Eastern District of
15 California.

16 Plaintiffs are several nonprofit environmental organizations, all of whom are located or
17 maintain offices in the Eastern District of California. Plaintiff Sierra Club maintains an office in
18 Sacramento, in the Eastern District of California. See
19 <http://www.sierraclub.org/field/index.asp#CA/NV/HI>. The Tehipite Chapter of the Sierra Club,
20 located in Fresno County, participated in the NEPA process and administratively appealed the
21 Kings River Project. See <http://www.fs.fed.us/r5/ecoplan/appeals/2007/fy07-0018.htm> (decision
22 on Tehipite Chapter Appeal). See also <http://tehipite.sierraclub.org/index.html> (Tehipite Chapter
23 website). Plaintiff Earth Island Institute’s John Muir Project – which participated in the NEPA
24 process for the Kings River Project – is located in Cedar Ridge, California, within the Eastern
25 District. <http://www.johnmuirproject.org/contact.html>. Plaintiffs Sierra Forest Legacy and
26 California Native Plant Society each maintain an office in Sacramento, in the Eastern District.
27 See <http://www.sierraforestlegacy.org/Contact.html>; <http://www.cnps.org/cnps/about/>.

LEGAL STANDARD

Defendants' motion to transfer is brought under 28 U.S.C. § 1404(a). Section 1404(a) provides that, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The Court has broad discretion to adjudicate a motion to transfer venue. Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000); Inherent.com v. Martindale-Hubbell, 420 F. Supp. 2d 1093, 1098 (N.D. Cal. 2006).

ANALYSIS

District courts use a two-step analysis to determine whether a case should be transferred. First, the Court considers whether the case could have been brought in the forum to which transfer is sought. 28 U.S.C. § 1404(a); see Hatch v. Reliance Ins. Co., 758 F.2d 409, 414 (9th Cir. 1985); Inherent.com, 420 F. Supp. 2d at 1098. Second, the Court makes an "individualized case-by-case consideration of convenience and fairness." Jones, 211 F.3d at 498.

A. This Case Could Have Been Brought in the Eastern District of California

28 U.S.C. § 1404(a) requires that the district to which transfer is sought be a "district or division where [the case] might have been brought." Where the case "might have been brought" is determined by 28 U.S.C. § 1391(e), which provides that in suits against agencies of the United States, venue is proper in "any judicial district in which (1) a defendant in the action resides, (2) a substantial part of the events or omissions giving rise to the claim occurred . . . or (3) the plaintiff resides" Id.

Plaintiffs here might have properly brought their NEPA and NFMA claims in the Eastern District of California on any number of bases under 28 U.S.C. § 1391(e). For example, the Kings River Project is located in the Sierra National Forest, which lies entirely within the Eastern District of California, and all of the communities to be benefitted by the reduced fire risk are located in the Eastern District of California. Therefore, that is "the judicial district in which . . . a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(e)(2).

Additionally, Plaintiffs' NEPA and NFMA claims could have been brought in the Eastern

1 District of California because it is a “judicial district in which [] a defendant in the action resides .
 2 . . .” 28 U.S.C. § 1391(e)(1). The Ranger District where the Kings River Project was prepared is
 3 in Prather, California, and the relevant Regional Office of the Forest Service is in Vallejo,
 4 California. Thus, the Forest Service is considered to reside in the Eastern District of California.

5 Because all of the relevant events and information are found there, this case “might have
 6 been brought” in the Eastern District of California. As a result, the Court has power to transfer
 7 the case there. 28 U.S.C. § 1404(a).

8 **B. The Interests of Justice and the Convenience of the Parties Weigh in Favor of**
 9 **Transfer**

10 The factors a court considers in deciding whether the court should grant the transfer
 11 motion are where the operative facts occurred, the convenience of the parties, the convenience of
 12 the witnesses, the relative ease of access to the sources of proof, the plaintiff’s choice of forum, a
 13 forum’s familiarity with governing law, trial efficiency, and the interests of justice. Jones, 211
 14 F.3d at 498; see Klamath Siskiyou Wildlands Center v. U.S. Forest Service, No. C-04-1066 JCS,
 15 slip op. (N.D. Cal. July 15, 2004) (transferring case from Northern District of California to
 16 Eastern District of California for convenience of the witnesses and parties and because all the
 17 events giving rise to suit occurred in Eastern District); United States v. Covenant Care, Inc., 1999
 18 WL 760610 at 1 (N.D. Cal. Sept. 21, 1999) (same); Garcia v. Allstate Ins. Co., 1996 WL 601689
 19 at 1 (N.D. Cal. Oct. 9, 1996) (same); see also Nat’l Computer Ltd. v. Tower Indus., Inc., 708 F.
 20 Supp. 281 (N.D. Cal. 1989) (transferring case from Northern District of California to Central
 21 District of California for convenience of witnesses and because the dispute does not involve a
 22 controversy of particular interest to the Northern District); Bell v. U.S. Forest Serv., 385 F. Supp.
 23 1135, 1137 (N.D. Cal. 1974). Where the operative facts did not occur in plaintiffs’ chosen forum
 24 and the forum does not have a particular interest in the parties or the dispute, then plaintiffs’
 25 choice of forum is entitled to minimal consideration. Lou v. Belzberg, 834 F.2d 730, 739 (9th
 26 Cir. 1987); Florens Container v. Cho Yang Shipping, 245 F. Supp. 2d 1086, 1092 (N.D. Cal.
 27 2002) (citing Pac. Car & Foundry Co. v. Pence, 403 F.2d 949, 954 (9th Cir. 1968)).
 28

1 **1. There is a Compelling Public Interest in Having Land Management Decisions**
 2 **Heard Where the Land is Located.**

3 There is a compelling public interest in having land management decisions heard in the
 4 jurisdiction where the land is located. Klamath Siskiyou Wildlands Center v. U.S. Forest Serv.,
 5 No-04-1066 at * 6 (slip op. N.D. Cal. July 15, 2004); S. Utah Wilderness Alliance v. Norton, 315
 6 F. Supp. 2d 82, 88 (D.D.C. 2004) (“Land is a localized interest because its management directly
 7 touches local citizens.”); Trout Unlimited v. U.S. Dep’t of Agric., 944 F. Supp. 13, 19 (D. D.C.
 8 1996) (noting disputes “should be resolved in the forum where the people ‘whose rights and
 9 interests are in fact most vitally affected by the suit’”); Citizen Advocates for Responsible
 10 Expansion, Inc., v. Dole, 561 F. Supp. 1238, 1240 (D.D.C. 1983) (transferring case to Texas from
 11 Washington, D.C. because highway proposal was uniquely local concern)

12 Here, the parties do not dispute that the Kings River Project is located entirely within the
 13 Eastern District of California. The portions of the Kings River Project Environmental Impact
 14 Statement submitted by Defendants in support of their motion indicate a strong and particularized
 15 local interest in the project.

16 The Court therefore finds that the localized interest in the land affected by the project
 17 weighs strongly in favor of transfer to the Eastern District the Eastern District of California.

18 **2. The Convenience of the Witnesses and Parties**

19 This case will be reviewed under the Administrative Procedure Act on the basis of an
 20 administrative record and without witness testimony. 5 U.S.C. § 706; Camp, 411 U.S. at 142.
 21 Thus, convenience of witnesses “has less relevance because this case involves judicial review of
 22 an administrative decision.” Trout Unlimited, 944 F. Supp. at 18. While the convenience of
 23 witnesses is of reduced importance, that fact remains that: “[c]ontroversies should be resolved in
 24 the locale where they arise. This policy rationale applies equally to the judicial review of an
 25 administrative decision which will be limited to the administrative record.” Id. at 19.

26 **3. Transfer will not Inconvenience or Prejudice Plaintiffs.**

27 Plaintiffs would not be inconvenienced by transfer to the Eastern District of California.
 28 “Deference to a plaintiffs’ forum choice is diminished where . . . transfer is sought to the

plaintiffs' resident forum." Airport Working Group of Orange County, Inc. v. U.S. Dep't of Def., 226 F. Supp. 2d 227, 230 (D.D.C. 2002) (internal quotation marks and citation omitted); see Panetta v. SAP America, Inc., 2005 WL 1774327 (N.D. Cal. July 26, 2005). Plaintiffs each maintain an office in the Eastern District of California. Thus, transfer to the Eastern District would not be an inconvenience to Plaintiffs.

Nor will Plaintiffs be prejudiced by transfer. The Eastern District of California routinely hears these types of environmental cases involving projects on National Forests, and thus has familiarity with the governing law. See, e.g., Sierra Nevada Forest Prot. Campaign v. Tippin, Case No. S06-351-FCD-DAD, 2006 WL 2583036 (E.D. Cal. Sept. 6, 2006); Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv., Case No. 2:05-CV-299-MCE-PAN, 2006 WL 1991404 (E.D. Cal. July 14, 2006); Sierra Club, Inc. v. Bosworth, Case No. 2:04-CV-2114-GEB-DAD, 2005 WL 2281074 (E.D. Cal. Sept. 16, 2005). Moreover, no substantial proceeding have occurred in this district, so that transfer will not delay resolution of this case.

The Court concludes Plaintiffs will not be inconvenienced or prejudiced by the transfer of this case.

4. This Case is not Related to Other Cases in the Northern District

In opposing transfer of this matter, Plaintiffs asserted that this case is related to previous litigation before Judge Breyer in the Northern District. On June 15, 2007, Judge Breyer issued an order finding this case is not related to the prior litigation before him. See Doc. No. 18. The asserted relationship between this case and another matter in the Northern District therefore does not give the Northern District any particular interest in this project.

5. Judicial Efficiency will not be Impaired by the Transfer of this Case

Plaintiffs assert that transfer to the Eastern District might "impair judicial efficiency by resulting in slower resolution of this matter." While docket congestion may be considered in determining whether to transfer venue, such administrative concerns are to be afforded "little weight." Amini Innovation Corp. v. JS Imports, Inc., --- F.Supp.2d ----, 2007 WL 1597942, *14 (C.D.Cal. 2007) citing Gates Learjet Corp. v. Jensen, 743 F.2d 1325, 1335 (9th Cir.1984). See also Royal Queentex Enterprises v. Sara Lee Corp., 2000 WL 246599, *8 (N.D.Cal. 2000)

1 (“Relative court congestion is at best, a minor factor in the section 1404 calculus.”); Dorfman v.
2 Jackson, 2005 WL 2176900, *9 (N.D. Cal. 2005) (“The factor of relative docket congestion
3 would probably favor Montana, although *this factor is not an important one.*”) (emphasis added).
4 Indeed, docket congestion should play a role in changing venue, only where “the backlogs in the
5 two courts are so totally disproportionate that it is obvious that time to trial would be radically
6 longer in the court initially selected by plaintiff.” Gintz v. Jack in the Box, Inc., 2007 WL
7 397306, *4 (N.D. Cal. 2007).

8 Here, there is no evidence that it will take “radically longer” for this case to be heard in
9 the Eastern District than in the Northern District. Id. Plaintiffs suggest the median time for
10 resolution of civil disputes is two and half months longer in the Eastern District than in the
11 Northern District. Such a minor differential does not suggest transfer will impair judicial
12 efficiency, and Courts have rejected attempts to base transfers on similar minor differentials. See,
13 e.g., Catch Curve, Inc. v. Venali, Inc., 2006 WL 4568799 (C.D. Cal. 2006) (holding 1.7 month
14 longer median time to resolve cases “is insubstantial and does not warrant a transfer of venue”);
15 Guthy-Renker Fitness v. Icon Health & Fitness, Inc., 179 F.R.D. 264, 273 (C.D. Cal.1998)
16 (holding that a difference of two months in median time to trial did not warrant transfer).

17 The Court finds judicial efficiency will not be impaired by the transfer of this case.

18 CONCLUSION

19 Accordingly, the Court GRANTS Defendants’ motion to transfer venue to the Eastern
20 District of California.

21 IT IS SO ORDERED.

22 DATED:

23 _____
24 Sandra Brown Armstrong
25 United States District Judge
26
27
28